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BY HAND DELIVERY

Jeff S. Jordan
Federal Election Commission
General Counsel's Office
999 E Street NW
Washington, DC 20463

Re: MUR 6932

Dear Mr. Jordan:

We submit this letter as counsel on behalf of Secretary Hillary Rodham Clinton, in response to the Complaint filed with the Federal Election Commission (the "FEC" or "Commission") by Foundation for Accountability and Civic Trust, dated April 1, 2015.

The Complaint makes two principal allegations.

The first is that Secretary Clinton should have filed her Statement of Candidacy earlier than April 13, 2015. This allegation is meritless. Secretary Clinton became a candidate on April 1, 2015 and filed her Statement of Candidacy within the 15-day deadline. To support its baseless allegation, the Complaint cites to speculative media reports and anonymous sources – evidence that the FEC has previously deemed inherently unreliable and an insufficient basis to proceed with an investigation. Moreover, the activities that the Complaint highlights fall within the "testing the waters" allowance afforded to individuals considering whether to run for federal office.

The second is that Secretary Clinton accepted impermissible contributions. This allegation, too, has no merit. The Complaint erroneously suggests that the fees Secretary Clinton received for her pre-candidacy appearances are "contributions," but marshals no evidence that the payments were made to influence an election or in recognition of a potential future candidacy. The Complaint also recycles staid charges that Secretary Clinton received "contributions" from supportive Super PACs, but provides no support for these claims.

Secretary Clinton complied with the Act and Commission regulations at all times while she was weighing whether to become a federal candidate. After qualifying as a candidate, she timely filed a Statement of Candidacy with the FEC. Accordingly, the Commission should dismiss this baseless complaint and close the file.

I. Facts

During the period before she became a candidate, Secretary Clinton spent some time exploring whether to run for President. To help her make this decision, Secretary Clinton consulted with campaign and other professionals; commissioned polling and self-research; spoke with individuals who could play important roles in her campaign if she decided to run; sketched out what a budget might look like in order to determine how much funding would be necessary to wage the campaign; and identified office space that could be used in the event she decided to run.

On April 1, 2015, Secretary Clinton became a candidate. That day, a lease was entered into for commercial space in Brooklyn. On April 12, 2015, Secretary Clinton publicly announced that she would run for President. The next day, April 13, 2015, she filed a Statement of Candidacy with the FEC and authorized Hillary For America ("HFA") to serve as her principal committee; HFA filed a Statement of Organization the same day.

II. Analysis

For the Commission to find reason to believe that a violation occurred, a complaint must set forth sufficient specific facts which, if proven true, would constitute a violation of the law. See 11 C.F.R. § 111.4. "Unwarranted legal conclusions from asserted facts ... or mere speculation ... will not be accepted as true." Matter Under Review 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas (Dec. 21, 2000). Moreover, "[a] mere conclusory accusation without any supporting evidence does not shift the burden of proof to respondents." Matter Under Review 4850, Statement of Reasons of Commissioners Wold, Mason, and Thomas (July 20, 2000). The Complaint fails this test and should be dismissed.

A. Secretary Clinton Timely Registered as a Candidate

An individual becomes a "candidate" when she receives "contributions" or makes "expenditures" in excess of \$5,000. See 52 U.S.C. § 30101(2). Secretary Clinton became a candidate on April 1, 2015 and made a public announcement of her candidacy on April 12, 2015. After becoming a candidate, an individual has fifteen days to file a Statement of Candidacy with the Commission. *Id.* § 30102(e)(1). Secretary Clinton timely filed her Statement of Candidacy on April 13, 2015, in advance of the statutory deadline.

An individual who has not decided to run as a federal candidate may "test the waters" before declaring candidacy. 11 C.F.R. §§ 100.72, 100.131. Under this exception, funds raised and spent to determine whether the individual should become a candidate do not trigger candidacy status. *Id.* This exception permits individuals to determine whether a candidacy for federal office is feasible or desirable, prior to registering as a candidate and establishing a campaign

committee. FEC Adv. Op. 1981-32 (Askew). Prior to becoming a candidate, Secretary Clinton engaged in activities consistent with this allowance. As noted above, she consulted with campaign and other professionals; commissioned polling and self-research; spoke with individuals who could play important roles in her campaign if she decided to run; sketched out what a budget might look like in order to determine how much funding would be necessary to wage the campaign; and identified office space that could be used in the event she decided to run.

There have been instances in prior cycles where the FEC determined that an individual purporting to be "testing the waters" has, in fact, crossed the line into candidacy. In making that finding, the FEC pointed to public statements made by the individual, public communications authorized by the individual, and other public conduct that demonstrated that a decision to run for office had been made. See Matter Under Review 5363, Factual and Legal Analysis (Oct. 30, 2003) (pointing to statement in candidate's book that "I am running for president to finally put the issues concerning most Americans onto the front burner."); Matter Under Review 5693, Factual and Legal Analysis (Nov. 2, 2006) (pointing to solicitation that "indicate[d] that the solicited funds will be used to campaign against a specifically named opponent"); Matter Under Review 6449, Factual and Legal Analysis (Aug. 9, 2012) (pointing to a solicitation stating "Please help me defeat Ben Nelson in 2012 by making a contribution today. Together we can take back this country and bring true Nebraska values to Washington.").

However, the FEC has *not* relied on statements by anonymous sources or speculation by political reporters in making such a finding. In fact, the FEC has warned that such information cannot serve as the basis to proceed with a complaint. See Matter Under Review 4960, Statement of Reasons of Commissioners Mason, Sandstrom, Smith, and Thomas (concluding that mere allegations in a newspaper – specifically, an unsubstantiated quotation – are insufficient evidence). "[A]dherence to the Commission's regulations regarding sources of information contained in complaints cautions against accepting as true the statements of anonymous sources (especially since the Commission's regulations expressly prohibit consideration of anonymous complaints)." Matter Under Review 5977 and 6005, Statement of Reasons of Commissioners Petersen, Hunter, and McGahn.

Ignoring the FEC's admonitions, the Complaint rests principally on these sources of unreliable evidence. The Complaint does not include any statements by Secretary Clinton or named sources speaking on her behalf that identify her as a candidate or indicate that she had made a decision to run. And the Complaint deliberately ignores authorized, on-the-record statements by Secretary Clinton's agents indicating that she had *not* made a decision whether to become a candidate. See Maggie Haberman, *Hillary Clinton's Shadow Campaign*, Politico (Jan. 5, 2014)

("This is a very personal decision, *one she has said she won't be making anytime soon,*" said Clinton spokesman Nick Merrill") (emphasis added).¹

The conduct that the Complaint points to is well within the "testing the waters" allowance:

- The Complaint, for instance, argues that Secretary Clinton's consultations with campaign and other professionals is conclusive evidence that she had decided to run. But the FEC has identified such consultations as permissible testing the waters activities. *See* FEC Adv. Op. No. 1981-32 (Askew) (employment of political consultants for the purpose of assisting with advice on the potential and mechanics of constructing a national campaign organization is permissible testing the waters activity); FEC Adv. Op. No. 1982-3 (Cranston) (hiring political consultants is permissible testing the waters activity).
- The Complaint alleges that Secretary Clinton's commissioning of polling and self-research triggered candidacy. But this, too, is precisely the type of activity that the FEC contemplates will occur during the testing-the-waters phase. *See* FEC Adv. Op. No. 1981-32 (Askew) (conducting polls for the purpose of determining the feasibility of a national campaign is permissible testing the waters activity); FEC Adv. Op. No. 1982-3 (Cranston) (hiring an independent contractor to conduct research tasks is permissible testing the waters activity).
- The Complaint contends that Secretary Clinton's effort to identify those who would serve in a management role made her a candidate. Again, however, the FEC has allowed a potential candidate to plan the mechanics of a potential national campaign organization within the bounds of the testing the waters exception. *See* FEC Adv. Op. No. 1981-32 (Askew). That is even more true in today's campaign environment, where recruiting sought-after staff is often a necessary precondition to becoming a candidate. Other candidates who have explored a possible presidential candidacy have chosen not to run after key staff joined rival campaigns. *See* Ashley Parker & Jonathan Martin, *Support Waning, Romney Decides Against 2016 Bid*, N.Y. Times (Jan. 30, 2015) (reporting that Mitt Romney decided not to run for president in 2016 after a potential staff member in the key state of Iowa was hired by Jeb Bush).
- The Complaint also claims that budgetary planning was a campaign activity, rather than a testing the waters activity. But understanding the parameters of a potential budget is an essential component of testing the waters for a candidacy. The very premise underlying

¹ The Complaint bizarrely claims that the former Secretary of State triggered candidacy by "weighing in on public issues on social media" But if everyone who used a Twitter account to comment on public policy was deemed a candidate, the FEC would need thousands of additional staffers to deal with the sudden surge of candidacy paperwork.

the testing the waters exemption is to allow a potential candidate to test the "feasibility" of a national campaign. One cannot know whether a campaign is "feasible" without determining how much the campaign might cost.

- The Complaint contends, too that Secretary Clinton engaged in testing the waters activities for a "protracted period of time." However, the activities described in the complaint largely took place during a three month period from January to March of 2015.² Three months is *not* a "protracted period of time" to explore candidacy. *See, e.g.* Matter Under Review 5934, Statement of Reasons of Commissioners Petersen, Hunter, McGahn, and Weintraub (March 10, 2009) (voting to dismiss complaint where presidential candidate was testing the waters for more than three months).
- Finally, the Complaint would have the Commission find that Secretary Clinton was required to file candidate documents because she was allegedly "seeking out" space in which to house a campaign headquarters. A lease was entered into on April 1, 2015, at which point Secretary Clinton had already become a candidate. The Commission has previously determined that entering into a lease *before* an individual claims to be a candidate does not obligate the individual to file with the Commission. *Id.* ("the mere signing of a long-term lease does not necessarily alter the testing the waters analysis because one could sign a long-term lease for other reasons ..."). If that is the case, then merely exploring the possibility of a lease certainly does not obligate an individual to file with the Commission.

Notably, the Complaint does not allege that Secretary Clinton used general public political advertising to publicize her intention to run for office. *See* 11 C.F.R. § 100.72(b). Nor does it allege that she raised funds in excess of what could reasonably be expected to be used to explore a potential 2016 presidential candidacy. *Id.* Nor does it allege that she made or authorized written or oral statements that referred to herself as a candidate. *Id.* Nor does it allege that she took any action to qualify for the ballot under any state's law. *See id.* Because Secretary Clinton engaged only in permissible testing the waters activities prior to becoming a candidate, her April 13, 2015 filing was timely.

B. Secretary Clinton Did Not Accept Impermissible Contributions

The Complaint also alleges that the fees that Secretary Clinton received for appearances prior to becoming a candidate were somehow "contributions." That allegation has no basis whatsoever. Nothing in federal law prohibits a potential candidate from engaging in her regular, ongoing

² The Complaint also references a meeting from summer of 2013 in which past supporters of Secretary Clinton met with her to discuss the current political environment and a potential run for office. Such a meeting, by itself, does not amount to "testing the waters" activity.

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business while she is deciding whether to become a federal candidate, or at any other point. In fact, FEC regulations define "personal funds" to include salary or other earned income from bona fide employment. 11 C.F.R. § 100.33(b)(1). The income earned by Secretary Clinton falls squarely within that category. The Complaint does not provide any evidence that the fees were paid to influence a federal election or were paid to Secretary Clinton because she was considering a run for office. *See, e.g. id.* §§ 100.52(a), 113.1(g)(6). The fees, therefore, are not "contributions."

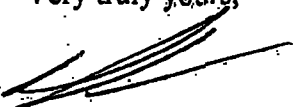
The Complaint also states that certain activities "raised questions of coordination" with outside groups. This argument, too, has no merit. First, while the Complaint mentions the group Priorities USA, it does not identify any expenditures that Priorities USA purportedly made in coordination with Secretary Clinton. Second, the Complaint's allegation that the activities of Ready for Hillary triggered candidacy for Secretary Clinton or constituted a "contribution" have already been rejected. *See Matter Under Review 6775, Factual and Legal Analysis* (Sept. 17, 2014).

In summary, the Complaint offers no evidence that Secretary Clinton accepted an impermissible contribution.

III. Conclusion

For the foregoing reasons, we respectfully ask that the Commission find no reason to believe that Secretary Clinton violated the Act and dismiss the matter immediately.

Very truly yours,



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Counsel to Secretary Hillary Rodham Clinton